

KINGS RIVER CONSERVATION DISTRICT PEAKING PLANT

Small Power Plant Exemption (03-SPPE-2)
Fresno County

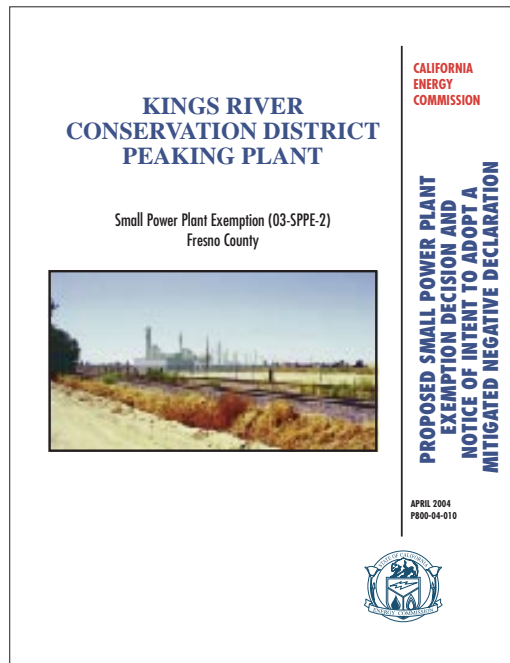


CALIFORNIA
ENERGY
COMMISSION

**PROPOSED SMALL POWER PLANT
EXEMPTION DECISION AND
NOTICE OF INTENT TO ADOPT A
MITIGATED NEGATIVE DECLARATION**

APRIL 2004
P800-04-010





CALIFORNIA ENERGY COMMISSION

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The Committee hereby submits its Proposed Decision and Notice of Intent to Adopt a Mitigated Negative Declaration on the Application for a Small Power Plant Exemption for the Kings River Conservation District Peaking Plant project (Docket Number 03-SPPE-02). We have prepared this document pursuant to the requirements set forth in the Energy Commission's regulations (20 Cal. Code of Regs., §§ 1934 et seq.) and the requirements of the California Environmental Quality Act and implementing Guidelines (14 Cal. Code of Regs, §§ 15000 et seq.).

Based upon the entirety of the record in this proceeding including the Small Power Plant Exemption Application, Applicant's Data Responses, the Energy Commission Staff's Draft and Final Initial Study and Proposed Negative Declaration, and comments by agencies and others, the Committee hereby recommends that the Application for the Small Power Plant Exemption be granted and that a Mitigated Negative Declaration be adopted, subject to the Conditions of Exemption set forth herein.

We direct Energy Commission staff to file this document with the Office of Planning and Research and take all other necessary and appropriate action to ensure that opportunity for public and agency review, as required by the provisions of the Public Resources Code and Guidelines, is provided.

Dated: April 14, 2004

**ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

JAMES D. BOYD, Commissioner
Presiding Committee Member

WILLIAM J. KEESE, Chairman
Associate Committee Member

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I. INTRODUCTION

The California Energy Resources Conservation and Development Commission (Commission) possesses the exclusive authority to license thermal power plants of 50 megawatts (MW) or more in capacity.¹ This licensing process generally is known as the Application for Certification (AFC). It is equivalent to the environmental impact report (EIR) process under the California Environmental Quality Act (CEQA).²

The Commission may exempt a project not exceeding 100 MW in capacity from this licensing process if it finds that no substantial adverse impacts on the environment or on energy resources will result from the construction or the operation of the project.³ This is known as the Small Power Plant Exemption (SPPE) process.⁴

The Commission is the lead agency under CEQA for all projects that it licenses or exempts from the licensing process.⁵ Projects exempted remain subject to applicable local permitting requirements. (1/26/04 RT 10:25-13:5.)

A. Project Considered

The Kings River Conservation District (KRCD) is sponsoring the SPPE for the KRCD Peaking Plant (KRCDPP). KRCD is a public agency whose mission is to:

- Provide flood protection;
- Achieve a balance in high-quality water supply; and

¹ Public Resources Code, section 25500. All statutory references are to the Public Resources Code. Additional references are to various documentary Exhibits (Ex.) and to the reporter's transcript (RT) of the Committee's informational and evidentiary hearings on January 26, and March 23, 2004, e.g., (Ex. 2, p. 1-1; 3/23/04 RT 123:8-124:3.). The Committee conducted a single evidentiary hearing on March 23, 2004, in Sacramento. Our Exhibit List is attached hereto as Appendix C.

²Section 21080.5; 14 Cal. Code of Regs., section 15251(k).

³ Section 25541.

⁴ See, 20 Cal. Code of Regs., sections 1934 et seq.

⁵ Section 25519 (c); see also section 21067.

- Develop power resources through Kings River Power for the benefit of the public. (Ex. 1, Vol. 1, pp. 1-2; 1/26/04 RT 24:17-25:16.)

In November 2002, the California Department of Water Resources (CDWR) and Williams Energy Marketing and Trading Company (Williams Energy) executed a settlement agreement with respect to the Power Purchase Agreement (PPA) between CDWR and Williams Energy. As part of the settlement agreement, Williams Energy transferred ownership of six General Electric (GE) LM 6000 Sprint model natural gas-fired combustion turbine generators (CTGs) and associated equipment to the State of California. Williams Energy also agreed to fund into an escrow account to be used to pay costs incurred by the State for the development of power plants utilizing the CTGs. On December 31, 2002, KRCD and CDWR executed an Implementation Agreement and a long-term (10-year) PPA for the development and operation of a power plant utilizing two of these CTGs. KRCDPP is that project we are considering for an SPPE exemption here.⁶ (Ex. 1, Vol. 1, p. 2; 3/23/04 RT 7:11-8: 9.)

B. Project Objectives

In relation to the KRCDPP, Kings River Power's objectives are to improve electrical reliability services, stabilize cost volatility, and establish local involvement in the Fresno area. To that end, KRCD, through Kings River Power, intends to develop, build, own, and operate the proposed KRCDPP project. (Exs. 1, p. 5; 2, pp. 2-1/2; 1/26/04 RT 30:5-6.)⁷

⁶ Both the CDWR and the California Power Authority were active participants in the planning and development of the proposed project. (Ex. 1, Vol. 1, p. 2.)

⁷ We agree with Applicant that the development of the KRCDPP is important to meet both the objectives of the KRCD and those of the State of California, which include: (1) adding peaking generating capacity in areas with the greatest demand, (2) providing for the development of peaking power plant units using the LM 6000 generators that the state received as part of the renegotiated Williams Energy PPA, and (3) developing cost-effective peaking power using development funds paid into an escrow fund by Williams Energy as part of the contract renegotiation. (Ex. 1, Vol. 1, p. 5.)

C. Project Description

The KRCDPP is a nominal 97-MW electric generation plant, which will occupy approximately 9.5 acres of a 19-acre site located in an existing industrially zoned area at 2611 E. North Avenue near the community of Malaga, in Fresno County.⁸ (Exs. 1, Vol. 1, p. 2; 1.1; 3/23/04 RT 5:18-7:10.)

Specifically, the KRCDPP will consist of two natural gas-fired, simple-cycle CTGs for peaking power generation that will be located together on a single common site. Each of the CTGs includes an air-cooled electric generator with an output voltage of 13.8 kilovolts (kV). Each also includes lubricating oil storage and coolers, a water injection system for nitrogen oxide (NOx) control, fire protection, control systems, and system enclosures. Inlet air to the CTGs will be chilled using a water-cooled chilling process. NOx emissions from the KRCDPP will be controlled by injecting water into the CTGs and by passing the CTG exhaust gas through a SCR system which utilizes aqueous ammonia. Carbon monoxide (CO) emissions will be controlled through the use of an oxidation catalyst. Common facilities will include natural gas compressors, electric switchyard and transmission line, maintenance and control building, an access road and parking area. (Ex. 1, Vol. 1, p. 3.)

In addition, the project will encompass construction of approximately:

- 0.75 miles of new overhead 115-kV transmission line;
- 700 feet of new underground eight-inch diameter gas supply pipeline;
- 2000 feet of new underground water and wastewater pipelines from the project facilities along the south side of North Avenue, connecting with the existing 10-inch diameter potable water supply line, and MCWD's sewer line at the intersection of North and Chestnut Avenues.⁹ (Exs. 1, pp. 2-3; 2, p. 2-2; 3/23/04 RT 9:10-10:7.)

⁸ The northern 9.5 acres of the 19-acre site would be used for temporary staging and parking areas during construction. An existing 4-acre storm water basin is located on the southern portion of the northern 9.5 acres. The basin would be used for storm water discharge associated with KRCDPP's construction. (Ex. 1, Vol. 1, p. 2.)

⁹ The Malaga County Water District (MCWD) will supply 75 acre-feet per year (afy) [210 gallons per minute (gpm)] of peak demand non-potable water to the proposed project from its single distribution system that delivers water for both potable and non-potable uses in the area. The source of the MCWD's supply is entirely from groundwater. Water from the MCWD would serve the domestic, cooling, and

The proposed project is a simple-cycle power plant fueled by natural gas. It consists of two General Electric LM 6000 SPRINT turbines and ancillary equipment. Air emission controls are considered to be the Best Available Control Technology (BACT), and include a combustor water injection system, selective catalytic reduction (SCR), and continuous emissions monitoring of the exhaust stack. (Exs. 1, pp. 2-3; 2, pp. 2-3; 3-11.)

We find that the record establishes the following:

- KRCD and the State of California desire electrical generation peaking power for the Pacific Gas and Electric (PG&E) power grid in the greater Fresno area;
- KRCD has executed a PPA with the DWR that requires KRCD to sell power from a natural gas-fired simple cycle plant consisting of two GE LM 6000 CTGs;
- KRCD is required to utilize the two natural-gas-fired GE LM 6000 Sprint CTGs that were obtained by the State of California under terms of a settlement agreement with Williams Energy.¹⁰ (Exs. 1, Vol. 1, §§ 1.2.2, 4.1, 6.8-6.9; 2, p. 6.4.)

D. Process Followed

The Committee arrived at this Proposed Decision and Mitigated Negative Declaration via a comprehensive process, which provided extensive opportunity for public review and comment.

KRCD submitted its SPPE application for the KRCDPP project on November 26, 2003. The Committee held a public Informational Hearing and Site Visit on January 26, 2004. On the same day, Staff held a public workshop to discuss the project. Staff released its Draft Initial Study for public review and comment on February 11, 2004, and held a subsequent workshop on February 23, 2004. After that, the Committee held its

process water demands of the proposed project. The proposed project includes a zero liquid discharge (ZLD) system. This system will allow for recycling of waste streams for reuse within the facility and results in lower non-potable water demand. MCWD serves the local area; it has a groundwater well and a 10-inch water supply line located along Chestnut Avenue. The attached Final Initial Study contains a detail map showing the locations of the power plant and its linear facilities. (See e.g. Ex. 2, pp. 2-2, 9-5/9-9 & Project Description, Figure 1; 3/23/04 RT 8:1-11.)

¹⁰ Given the requirements of the PPA, we do not consider that alternative generating technologies for the KRCDPP are feasible and we defer to Staff's decision not to analyze them beyond what is contained in the Final Initial Study (Ex. 2; cf. 3/23/04 RT 9:23-7:10:6).

Prehearing Conference, which coincided with Staff's filing of the attached Final Study (Appendix A), on March 10, 2004. Thereafter, the Committee conducted its public evidentiary hearing on March 23, 2004. (3/23/04 RT 13:8-15:23.)

Our process engendered comment and participation both by public agencies and members of the public. Agencies included the:

- Department of Toxic Substances Control;
- Fresno County Department of Community Health, Environmental Health System;
- City of Fresno; and
- Malaga County Water District;
- Mr. Robert Sarvey; and
- Mr. Dale Fredericks.¹¹ (3/23/04 RT 14:25-15:23.)

This Decision serves two purposes. First, it contains this Committee's recommendation that the full Commission act to exempt the KRCDPP project from AFC licensing review.¹² Next, it also serves as a Notice of Intent to adopt a Mitigated Negative Declaration pursuant to CEQA.¹³ In arriving at our recommendation, we have reviewed and carefully considered the environmental impacts of the project, the impacts to the electric transmission system, and the project's effect upon energy resources.

As explained below, the evidence establishes that all impacts attributable to the project can be mitigated to insignificant levels. KRCD has agreed to implement the mitigation identified during this proceeding. We further specify 24 Conditions of Exemption (COE) that are required to ensure adequate mitigation, as well as provide an established mechanism to monitor and ensure compliance with the conditions imposed.¹⁴ (3/23/04 RT 15:17-23.)

¹¹ Messrs. Sarvey and Fredericks were present along with other members of the general public at the Committee's Informational Hearing, and Mr. Fredericks participated by offering public comment. However, neither appeared at our evidentiary hearing and there were no other members of the public or agencies present. (1/26 and 3/23 RT.)

¹² 20 Cal. Code of Regs., section 1945.

¹³ Section 21064.5; 14 Cal. Code of Regs., section 15072.

¹⁴ See section 21081.6.

Finally, we have required that this document be circulated in accordance with applicable provisions of the CEQA Guidelines.¹⁵ In addition, and as separately noticed, the Committee will conduct a public Conference to discuss the contents of this Proposed Decision on April 22, 2004, and the full Commission will consider whether to grant this application for an SPPE and adopt a Mitigated Negative Declaration at its regularly scheduled business meeting on May 19, 2004.

E. Further Information

All documents pertinent to this proceeding are available for public inspection at the Commission's Docket Unit, 1516 Ninth Street, MS-13, Sacramento, California 95814, and also on the Commission's web page at:

[<http://www.energy.ca.gov/sitingcases/ripon/index.html>].

Ms. Margret J. Kim, the Commission's Public Adviser, can provide information on public participation; she may be reached at 916-654-4486 or by email at: **[pao@energy.state.ca.us].**

Mr. Jack Caswell, the Staff Project Manager, can provide technical information at, 916-653-0062 or by email at: **[jcaswell@energy.state.ca.us].**

Procedural questions may be addressed to Major Williams, Jr., the Hearing Officer, at 916-654-3893.

¹⁵ See, 14 Cal. Code of Regs., sections 15072, 15073; see also 3/23/04 RT 28-32.

II. ENVIRONMENTAL ASSESSMENT

This Proposed Decision and Mitigated Negative Declaration are based solely upon the record of this proceeding, including the documents reflected on the Exhibit List (Appendix C) and the evidentiary presentations.

A. Standard Applied

The SPPE's Initial Study is fundamentally a preliminary analysis to determine whether an exemption should be granted or the AFC review must be pursued. In reviewing the evidence of record, and in deciding whether to grant the KRCDPP project a SPPE from our AFC process, we have applied the "fair argument" standard. Under this standard, we must require AFC-level review if there is any substantial evidence in the record which supports a fair argument that the KRCDPP project may have a significant effect upon the environment. (See the Commission's SPPE Decision in *Modesto Irrigation District Electric Generation Station Ripon* (03-SPPE-1) (MEGS), pp. 6-8, for a detailed enunciation of the fair argument standard; 1/26 RT 7:1-8:12.)

Our review of the evidence confirms that there is no fair argument that the proposed project may have a significant effect upon the environment. Indeed, the parties agree that with the COEs provided in the Initial Study, all environmental and energy resources impacts will be mitigated to a level of insignificance. We concur with the parties' conclusion.

B. Summary of Impacts

The evidence of record supports the characterization of impacts as summarized below:¹⁶

¹⁶ This modified checklist format largely reflects the conclusions contained in the Final Initial Study. (Exhibit 2 & attached as Appendix A, p. iii.). We have, however, modified the original to reflect our conclusions based on the evidence of record.

<i>Topic Area</i>	<i>Potentially Significant Impact</i>	<i>Less Than Significant Impact With Mitigation</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
ENVIRONMENTAL				
Agricultural and Soil Resources			X	
Air Quality		X		
Biological Resources		X		
Cultural Resources		X		
Energy Resources				X
Geology and Paleontology		X		
Hazardous Materials and Waste		X		
Hydrology and Water Quality		X		
Land Use and Recreation				X
Noise		X		
Public Health		X		
Socioeconomics				X
Traffic and Transportation		X		
Visual Resources			X	
Waste Management		X		
Worker Safety				X
ENGINEERING				
Transmission Line Safety and Nuisance			X	
Transmission System Engineering		X		

The parties agreed that the proposed project would create no significant unmitigated impacts to environmental or energy resources. The evidentiary bases for these characterizations are set forth below.

C. Environmental Areas with No Impacts

The evidence of record is uncontroverted in establishing that the KRCDPP project will have no impacts to **Energy Resources**¹⁷ or in the environmental disciplines of **Land**

¹⁷ In order to grant an exemption from the AFC licensing process, the Commission must be able to find that a proposed project will not create a significant adverse impact upon energy resources. (Section 25541.) An impact can be considered significant if it results in: adverse effects on local and regional energy supplies and resources; a requirement for additional energy supply capacity; or the wasteful, inefficient, and unnecessary consumption of fuel or energy. (MEGS, p. 16.) The unconverted evidence of record establishes that KRCDPP will provide peaking power exclusively to the state and that the proposed simple cycle configuration is the preferable means of providing this power. The evidence also

Use and Recreation, Socioeconomics and Worker Safety. (Exs. 1, p. 9; 2, pp. 6-5; 11-7 & 14-7.) Therefore, no further discussion or Conditions of Exemption (COEs) are required.¹⁸

D. Environmental Areas with Less than Significant Impacts

The uncontradicted evidence of record establishes that the project will result in a less than significant impact on two environmental topics areas, where no COEs are needed. These are **Agricultural and Soil Resources**; and **Visual Resources**.¹⁹ Because Staff has recommended no COEs for these areas and we are persuaded that this recommendation is appropriate, they require no further discussion. In the Final Initial Study, Staff concluded that the remaining environmental topics all require COEs to reduce impacts to a level of less than significant. (Appendix A.) We summarize those findings below.

1. **Air Quality.** The KRCDPP project can potentially impact air quality during both the construction and the operation phases. The evidence clearly establishes that **COEs AQ-C1 through AQ-C5**, as revised, will adequately mitigate any construction impacts. The record does not contain any contradictory evidence. (Ex. 2, p. 3-34-38.)

The record establishes that operational air quality impacts were analyzed in three ways: pollution control technologies; air quality impacts analysis; and preparation of a health risk assessment. Applicant performed a thorough air quality impact analysis using dispersion models required by the United States Environmental Protection Agency

establishes that the project's fuel consumption will not adversely affect existing natural gas supplies. Thus, substantial uncontroverted evidence establishes that the proposed project does not have the potential to create adverse impacts under any of the tests enunciated above. (Exs. 1, Chapter 4; 1.1; 3/23/04 RT 9:17-10:6.)

¹⁸ We have adopted all the COEs that the parties presented to us without modification. They are attached hereto as Appendix B and also may be found under the relevant topics in Staff's Final Study (Appendix A hereto.)

¹⁹ The project site is a flat, open parcel located in an industrial area in a highly urbanized portion of Fresno County just south of the City of Fresno. It is part of a large, planned industrial complex. (Exs. 1.12; 2, pp. 18-3, 18-12.) Both Applicant's and Staff's expert witnesses analyzed the project's visual impacts based upon Appendix G of the CEQA Guidelines and concluded that the proposed project would not create any visible plumes, and no significant impacts would occur to the areas visual resources. (*Ibid.*)

(USEPA) and the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and a number of worst-case assumptions. Specifically, the analysis assumed worst-case operating scenarios, worst-case emissions, and worst-case weather conditions at the project site. The purpose of these conservative assumptions is to make certain that the KRCDPP Project will not cause any violations of any state or air quality standards at any location at any time under any weather conditions and under any operating conditions. The analysis made these combined worst-case assumptions even if the assumed conditions physically cannot occur at the same time. (Ex. 2, pp. 3-1/40; 3/23/03 RT 16:10-22:18; 23:22-28:23.)

To address local air quality impacts, KRCD and Staff analyzed the appropriate pollution control technology and the “best available control technology” (BACT). BACT requires that new facilities use the cleanest technologies available. This ensures that potential impacts on local air quality are minimized.²⁰ (Exs. 1, p.37; 2, p. 3-3, 3-20.)

With respect to CO, although the KRCDPP Project is not subject to BACT, the project will use an oxidation catalyst. (Ex. 2, p. 3.13.) The SJVUAPCD will require that CO emissions be limited to 6.0 ppmvd @ 15% O₂, and 6.6 lb/hr. This is comparable to BACT for other similar facilities. (See *MEGS*, p. 13.) NO_x will be controlled through a combination of two technologies, water injection and SCR. The Commission has reviewed this system many times before and found to be feasible and effective. (Ex. 2, p. 3-12-13.) Each combustion gas turbine is designed to meet a NO_x emission concentration limit of 2.5 ppmvd NO_x @ 15% O₂, averaged over three hours during all operating modes except gas turbine start-ups and shutdowns. (Exs. 1, pp. 21-22; 2, p. 3.13.) This meets the SJVUAPCD’s current BACT determination for NO_x for simple-cycle gas turbines such as those proposed for use at KRCDPP. (See *MEGS*, p. 13.)

Reactive organic gases (ROGs) will be controlled through the use of good combustion practices. For example, the KRCDPP is not expected to operate at partial load. The SJVUAPCD will require BACT for VOC at an emission limit of 2.0 ppmvd @ 15% O₂, and 1.6 lb/hr. In addition, during operation, the proposed project is limited to 2500 3

²⁰ In this case, SJVUAPD’s Authority to Construct will confirm that the KRCDPP Project complies with BACT. (3/23/03 RT 68).

hours of annual operation on a steady state. Staff, however, analyzed a total of 3120 hours of operation to allow for five hours of startup and shutdown phases and the ramping up that allows the turbines to get to the steady state. (Exs. 1, pp. 22, 27; 2, p. 3-28; 3/23/04 RT 27: 1-9.)

Emissions of sulfur dioxide (SO₂) and particulate matter less than 10 microns (PM₁₀) will be controlled through the use of natural gas as a fuel. KRCDPP will use exclusively natural gas, which satisfies the BACT requirement for SO₂. (Ex. 2, p. 3-28.) This also will result in minimal emissions and minimal formation of secondary PM₁₀. (Ex. 2, p. 1-13, 17, 20.)

Our **Condition of Exemption AQ-SC8** specifies mitigation for operational emissions. The expert testimony of record is uniform in establishing that the emission reductions identified will adequately mitigate the project's operational impacts and ensure compliance with applicable air quality laws. (3/23/04 RT 18:8-19:13; Ex. 2, p. 3-31.)

2. Public Health. The evidence establishes that the project will not result in significant adverse public health impacts. The COE contained for this topic is needed to assure the establishment of an adequate program to control bacterial growth from the cooling tower. (3/23/03 RT 19:14-22-20; 29:8-31:8; Ex. 2, pp. 13-1/12; Appendix B.)

3. Biological Resources. Incorporation of the mitigation measure for a preconstruction biological survey will assure that less than significant impacts occur. (Exs. 1.9; 2, p. 4-9.)

4. Cultural Resources. Employment of a Cultural Resources Specialist and associated monitoring, retrieval, and/or reporting of artifacts discovered during construction are necessary to prevent impacts. COEs are included to assure implementation of mitigation measures, which address these areas to our satisfaction. (Exs. 1.4; 2, pp. 5-10-13.)

5. Geology and Paleontology. Staff reviewed applicable geological maps and reports for the project area, and concluded that the project will not adversely impact

geologic and paleontologic resources. Our COE will require the Commission's Compliance Project Manager and Applicant to adopt a compliance monitoring scheme that will ensure no substantial adverse impact to geologic hazards and geologic resources for the proposed project. (Exs. 1.5; 2, pp. 7-10.)

6. Hazardous Materials Management. COEs regarding the transport and delivery of hazardous materials during both project construction and operation are necessary to ensure no significant adverse impact results. In view of the evidence presented concerning Applicant's hazardous release assessment, we adopt those recommended to us by the parties as sufficient. (3/23/04 RT 20:19-22:18; Exs. 1.3; 2, pp. 8-8/9.)

7. Hydrology and Water Quality. Uncontroverted evidence of record established that the proposed project's use of groundwater will be mitigated so that any impacts are less than significant by Applicant's recharge of the basin. (Exs. 1.10; 2, p. 9-15 **[WATER Condition 2]**; 3/23/04 RT 31:18-32:15; 37:7-25.) Moreover, potential wastewater discharge will be eliminated because the proposed project will employ a ZLD system. (3/23/04 RT 36:21-37:6.) Further, a COE will enable the Commission to fulfill a statutory obligation to collect and report information. (Ex. 2, p. 9-14 **[WATER Condition 1]**.) Therefore, we conclude that the KRCDPP project will not create adverse impacts in the technical area of **Hydrology and Water Quality**.

8. Noise. The project is located in an existing industrial area with a noise environment typical for such an area that may be characterized as fairly loud. During construction phases, noise from the KRCOPP site construction activities will dominate the noise environment in the immediate area. However, construction activities will be temporary in nature and a COE will ensure that construction occurs during daylight hours where impacts to residentially zoned property may occur. (Exs. 1.11; 2, p. 12-7, 12-14 **[NOISE Condition 1]**.)

Applicant provided uncontroverted evidence that the operation of the KRCDPP, with the inclusion of silencer packager on the turbine exhaust stacks, will result in an increase in noise levels of between 0 and 1 decibel (dB) at the nearest sensitive receptor.

Accordingly, we conclude that as conditioned, the KRCDPP project will not result in significant noise impacts. (Exs. 1, p. 6; 2, p. 12-13.)

9. Traffic and Transportation. The parties agreed that a construction traffic control plan for the project, in coordination with Fresno County, Caltrans, and the Fowler Unified School District, and Applicant's compliance with applicable Laws Ordinances, and Regulations (LORS) in regard to the transportation of hazardous materials would reduce all impacts in the local area to less than significant. (Exs. 1.8; 2, p. 15-7.) We concur.

10. Waste Management. Our COEs in this area will require Applicant:

- to determine through testing if the ZLD waste is hazardous and to take appropriate disposal action based upon the tests results; and
- to perform additional limited investigation to characterize the site and to take any necessary remedial action consistent with DTSC standards. (Ex. 2, pp. 19-5-6 [**WASTE Conditions 1 & 2**].)

With the inclusion of these COEs, our evidence of record establishes that the KRCDPP project will not cause a significant environmental impact in this area. (Exs. 1.3; 2, pp. 19.1-6.)

In conclusion, we find that no substantial evidence in the record supports a fair argument that the KRCDPP project may have a significant effect upon the natural environment in the above enumerated disciplines.

III. ENGINEERING TOPIC AREAS

Under CEQA, the requirements for a Mitigated Negative Declaration focus on potential impacts to the natural environment. The Commission, however, also performs an assessment of relevant engineering disciplines. In the present case, these disciplines involve electrical transmission issues insofar as determining whether the tie line from the project may expose the public to potential hazards (including electromagnetic fields), as well as the effects that the project may have upon the electrical grid.

1. Transmission Line Safety and Nuisance. The evidence uniformly establishes that the line will be designed according to existing regulatory criteria, and that KRCD's proposed measures will assure the line does not create radio frequency interference or aviation, shock, fire, or electromagnetic field hazards. (Exs. 1.2; 2, pp. 16-1/16.5.)

2. Transmission System Engineering. Uncontested evidence on this also demonstrates that KRCD performed, and Staff reviewed, various studies addressing the proposed project's impacts. Staff concluded and the evidence establishes that the KRCDPP's net output capacity of 97 MW would allow the KRCD to provide a more efficient and reliable local power resource, especially during peak seasons, in the load centers of the community of Malaga in Fresno County. Moreover, Staff believes that the proposed project would provide additional local reactive power, steady voltage and reduce PG&E system losses in the local network during peak hours. (Exs. 1.2; 2, p. 17-3.)

We conclude that no substantial evidence in the record supports a fair argument that the KRCDPP may have a significant effect upon either electrical transmission issues or the electrical grid.

IV. FINDINGS AND CONCLUSIONS

Based upon our independent judgment and the evidence of record as a whole, we make the following findings and reach the following conclusions:

1. The KRCDPP project is a simple cycle, gas fired power plant, nominally rated at 97-MW in capacity. The project's related facilities include a 0.75-mile transmission tie line, 700 feet of gas supply pipeline, and water supply and waste water tap lines.
2. The KRCDPP project and its related facilities, with implementation of the mitigation agreed to by Applicant and contained in the Conditions of Exemption, will comply with all applicable laws and will not create significant adverse impacts on the environment or energy resources.
3. The process followed in arriving at this SPPE Decision and Mitigated Negative Declaration conforms with the requirement of the appropriate portions of the Public Resources Code, as well as implementing regulations and Guidelines.
4. This Decision and Mitigated Negative Declaration reflect the independent judgment of the California Energy Commission, acting as lead agency in reviewing the KRCDPP project and its related facilities.
5. The record does not contain substantial evidence, which supports a fair argument that the project, as mitigated, would create a significant adverse impact in any environmental or engineering discipline reviewed.
6. The Compliance and Monitoring Plan included herein meets the requirements of the Public Resources Code and adequately ensures that the Conditions of Exemption will be implemented and enforced.

We therefore conclude that the KRCDPP project is eligible for an exemption from the Application for Certification provisions of the Commission's power plant licensing process.

V. ORDER

Kings River Conservation District's Small Power Plant Exemption for the Kings River Conservation District Peaking Plant is granted. We adopt the Committee's Proposed Decision and Mitigated Negative Declaration for the Kings River Conservation District Peaking Plant and find that, as mitigated, no substantial adverse impact on the environment or energy resources will result from the construction or operation of the project.

Commission staff shall ensure that the Decision and Mitigated Negative Declaration is submitted for public and agency review as required by the pertinent portions of the Public Resources Code and implementing Guidelines.

Dated April 14, 2004 at Sacramento, California.

JAMES D. BOYD
Presiding Committee Member

WILLIAM J. KEESE
Chairman

ARTHUR H. ROSENFELD
Commissioner

JOHN L. GEESMAN
Commissioner

(Vacant)

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Appendix A: Final Initial Study

Appendix B: Conditions of Exemption

Appendix C: Exhibit List



APPENDICES

Appendix A

Insert

STAFF REPORT

Initial Study

On the

**KINGS RIVER CONSERVATION DISTRICT
PEAKING PLANT**

Dated: March 2004

AIR QUALITY CONDITIONS OF EXEMPTION

STAFF CONSTRUCTION AND PRE-CONSTRUCTION CONDITIONS

AQ-SC1 The project owner shall designate and retain an on-site Air Quality Construction Mitigation Manager (AQCMM) who shall be responsible for directing and documenting compliance with **AQ-SC2** through **AQ-SC5** below for the entire project site and linear facility construction. The on-site AQCMM may delegate responsibilities to one or more air quality construction mitigation monitors. The AQCMM shall have full access to areas of construction of the project site and linear facilities, and shall have the authority to appeal to the CPM to have the CPM stop any or all construction activities as warranted by applicable construction mitigation conditions. The AQCMM may have other responsibilities in addition to those described in this condition. The AQCMM shall not be terminated by the project owner until a successor AQCMM has been designated such that there is no interruption in monitoring.

Verification: At least 60 days prior to the start of ground disturbance, the project owner shall submit to the CPM for approval, the name, resume, qualifications, and contact information for the on-site AQCMM and any air quality construction mitigation monitors. The AQCMM and all delegated monitors must be approved by the CPM before the start of ground disturbance.

AQ-SC2 The project owner shall provide an Air Quality Construction Mitigation Plan (AQCMP), for approval, which details the steps that will be taken and the reporting requirements necessary to ensure compliance with **AQ-SC3** through **AQ-SC5** below.

Where measures identical to or similar to those provided in **AQ-SC3** through **AQ-SC5** below are required in District Rules 8021 through 8081, the most stringent requirement shall apply and be identified in the AQCMP; except when the requirements listed below would conflict with the implementation and compliance with a District rule requirement. Any conflict between mitigation measures below and District Rules 8021 through 8081 will be identified in the AQCMP.

Verification: At least 60 days prior to the start of any ground disturbance, the project owner shall submit the AQCMP to the CPM for approval. The CPM will notify the project owner of any necessary modifications to the plan within 30 days from the date of receipt.

AQ-SC3 The AQCMM shall submit to the CPM, in the Monthly Compliance Report (MCR), a construction mitigation report that demonstrates compliance with the following mitigation measures for the purposes of preventing all fugitive dust from leaving the project site:

1. All unpaved roads and disturbed areas in the project and linear construction sites shall be watered as frequently as necessary to comply with the dust mitigation objectives of **AQ-SC4** (the prevention of fugitive dust

plumes). The frequency of watering can be reduced or eliminated during periods of precipitation.

2. No vehicle shall exceed 10 miles per hour within the construction site.
3. The construction site entrances shall be posted with visible speed limit signs.
4. All construction equipment vehicle tires shall be inspected and washed as necessary to be cleaned free of dirt prior to entering paved roadways.
5. Gravel ramps of at least 20 feet in length must be provided at the tire washing/cleaning station.
6. All unpaved exits from the construction site shall be graveled or treated to prevent track-out to public roadways.
7. All construction vehicles shall enter the construction site through the treated entrance roadways, unless an alternative route has been submitted to and approved by the CPM.
8. Construction areas adjacent to any paved roadway shall be provided with sandbags or other measures as specified in the Storm Water Pollution Prevention Plan to prevent run-off to roadways.
9. All paved roads within the construction site shall be swept at least twice daily (or less during periods of precipitation) on days when construction activity occurs to prevent the accumulation of dirt and debris.
10. At least the first 500 feet of any public roadway exiting from the construction site shall be swept at least twice daily (or less during periods of precipitation) on days when construction activity occurs or on any other day when dirt or runoff from the construction site is visible on the public roadways.
11. All soil storage piles and disturbed areas that remain inactive for longer than 10 days shall be covered, or shall be treated with appropriate dust suppressant compounds.
12. All vehicles that are used to transport solid bulk material on public roadways and that have potential to cause visible emissions shall be provided with a cover, or the materials shall be sufficiently wetted and loaded onto the trucks in a manner to provide at least one foot of freeboard.
13. Wind erosion control techniques (such as windbreaks, water, chemical dust suppressants, and/or vegetation) shall be used on all construction areas that may be disturbed. Any windbreaks installed to comply with this condition shall remain in place until the soil is stabilized or permanently covered with vegetation.

14. Diesel-Fueled Engines
- a. All diesel-fueled engines used in the construction of the facility shall be fueled only with ultra-low sulfur diesel, which contains no more than 15 ppm sulfur.
 - b. All diesel-fueled engines used in the construction of the facility shall have clearly visible tags issued by the on-site AQCMM showing that the engine meets the conditions set forth herein.
 - c. All construction diesel engines, which have a rating of 100 hp or more, shall meet, at a minimum, the Tier 1 California Emission Standards for Off-Road Compression-Ignition Engines as specified in California Code of Regulations, Title 13, section 2423(b)(1) unless certified by the on-site AQCMM that such engine is not available for a particular item of equipment. In the event a Tier 1 engine is not available for any off-road engine larger than 100 hp, that engine shall be equipped with a catalyzed diesel particulate filter (soot filter), unless certified by engine manufacturers or the on-site AQCMM that the use of such devices is not practical for specific engine types. For purposes of this condition, the use of such devices is "not practical" if, among other reasons:
 - d. There is no available soot filter that has been certified by either the California Air Resources Board or U.S. Environmental Protection Agency for the engine in question; or
 - e. The construction equipment is intended to be on-site for ten (10) days or less.
15. The CPM may grant relief from this requirement if the AQCMM can demonstrate that they have made a good faith effort to comply with this requirement and that compliance is not possible.
16. The use of a soot filter may be terminated immediately if one of the following conditions exists, provided that the CPM is informed within ten (10) working days of the termination:
- a. The use of the soot filter is excessively reducing normal availability of the construction equipment due to increased downtime for maintenance, and/or reduced power output due to an excessive increase in backpressure.
 - b. The soot filter is causing or is reasonably expected to cause significant engine damage.
 - c. The soot filter is causing or is reasonably expected to cause a significant risk to workers or the public.
 - d. Any other seriously detrimental cause which has the approval of the CPM prior to the termination being implemented.

- e. All heavy earthmoving equipment and heavy duty construction related trucks shall be properly maintained and the engines tuned to the engine manufacturer's specifications.
- f. No heavy construction equipment shall remain running at idle for more than five minutes, to the extent practical.

Verification: The project owner shall include in the MCR (1) a summary of all actions taken to maintain compliance with this condition, (2) copies of all diesel fuel purchase records, (3) copies of any complaints filed with the air district in relation to project construction, (4) a list of all heavy equipment used on site during that month, including the owner of that equipment and a letter from each owner indicating that equipment has been properly maintained, and (5) any other documentation deemed necessary by the CPM and AQCMM to verify compliance with this condition.

AQ-SC4 The AQCMM shall continuously monitor the construction activities for visible dust plumes. Observations of visible dust plumes that have the potential to be transported (1) off the project site or (2) 200 feet beyond the centerline of the construction of linear facilities or (3) within 100 feet upwind of any regularly occupied structures not owned by the project owner indicate that existing mitigation measures are not resulting in effective mitigation. The AQCMM shall implement the following procedures for additional mitigation measures in the event that visible dust plumes are observed:

Step 1: The AQCMM shall direct more aggressive application of the existing mitigation methods within 15 minutes of making such a determination.

Step 2: The AQCMM shall direct implementation of additional methods of dust suppression if step 1 specified above, fails to result in adequate mitigation within 30 minutes of the original determination.

Step 3: The AQCMM shall direct a temporary shutdown of the activity causing the emissions if step 2 specified above fails to result in adequate mitigation within one hour of the original determination. The activity shall not restart until the AQCMM is satisfied that appropriate additional mitigation or other site conditions have changed so that the visible dust plumes will not result upon restarting the shutdown source. The owner/operator may appeal to the CPM any directive from the AQCMM to shut down an activity, provided that the shutdown shall go into effect within one hour of the original determination, unless overruled by the CPM before that time.

Verification: The AQCMM shall include a section in the AQCMP detailing how the additional mitigation measures will be accomplished within the time limits specified.

AQ-SC5 During site mobilization, ground disturbance, and grading activities, the project owner shall limit the fugitive dust causing activities (i.e. scraping, grading, trenching, or other earth moving activities) to a eight hour per day schedule. Short excursions to this eight hour per day limit may be allowed, with CPM approval, if the site conditions and construction

activities are such that this will not cause significant construction dust impacts.

Verification: The project owner shall provide records of compliance as part of a monthly report.

GENERAL CONDITIONS

AQ-SC6 The project owner shall provide the CPM copies of all Authority-to-Construct (ATC) and Permit-to-Operate (PTO) air quality permits received from the District.

Verification: The project owner shall submit copies of the ATCs and PTOs to the Energy Commission CPM upon receipt of those permits from the SJVAPCD.

AQ-SC7 The project owner shall submit to the CPM for review and approval any modification proposed by the project owner to any project air permit. The project owner shall submit to the CPM any modification to any permit proposed by the District or U.S. EPA, and any revised permit issued by the District or U.S. EPA, for the project.

Verification: The project owner shall submit any proposed air permit modification to the CPM within five working days of its submittal either by 1) the project owner to an agency, or 2) receipt of proposed modifications from an agency. The project owner shall submit all modified air permits to the CPM within 15 days of receipt.

AQ-SC8 The project shall surrender the emission offset credits listed below or a modified list, as allowed by this condition, at the time that surrender of offsets is required by the District. The project owner may request CPM approval for any substitutions of or modifications to ERC sources listed below. The CPM, in consultation with the District, may approve any such change to the ERC list provided that the project remains in compliance with all applicable laws, ordinances, regulations, and standards, the requested change(s) clearly will not cause the project to result in a significant adverse environmental impact, and each requested change is consistent with applicable federal and state laws and regulations.

- NOx: 38,000 lbs. Certificates provided in accordance with the Term Sheet agreement executed between the project owner and Advanced Energy Systems, dated February 5, 2004.
- PM10: 21,820 lbs. Certificates #C-460-4 and #C-479-4.
- SOx: 3,300 lbs. Certificates provided in accordance with the Term Sheet agreement executed between the project owner and Advanced Energy Systems, dated February 5, 2004.
- VOC: 9,980 lbs. Certificates #N-416-1 and #N-418-1.

Verification: The project owner shall submit to the CPM a list of ERCs to be surrendered to the District at least 60 days prior to initial startup. If the CPM, in consultation with the District, approves a substitution or modification, the CPM shall file a statement of the approval with the commission docket and mail a copy of the

statement to every person on the post-certification mailing list. The CPM shall maintain an updated list of approved ERCs for the project.

BIOLOGICAL RESOURCES CONDITIONS OF EXEMPTION

Biological Surveys

BIO-1 The project owner shall provide a copy of the results from the following preconstruction activities to CDFG and the CPM.

1. A preconstruction survey for burrowing owls shall be completed at least 14 days prior to site mobilization. If burrowing owls are present on the site or along the linear facilities then the CDFG guidelines (1995) shall be implemented.
2. If coyotes are found denning on the site, hazing of the dens shall be implemented to ensure evacuation prior to disturbance by construction.
3. Prior to removal of vegetation in the borrow pit a survey for nesting birds shall be completed. If active nests are observed in vegetation that needs to be removed, avoidance or protective measures will be implemented.

Verification: The written results of the above activities shall be submitted to the CPM within 14 days of the start of site mobilization. Information including when surveys were completed, what was observed, and any additional follow up measures shall be reported. If burrowing owls are found on the project site then a report on the mitigation measures implemented and the results of the relocation shall be provided to the CPM within 14 days of completion. If nesting burrowing owls are present, evidence of habitat compensation that meets the CDFG guidelines shall be provided.

CULTURAL RESOURCES CONDITIONS OF EXEMPTION

CUL-1 Prior to the start of ground disturbance, the project owner shall provide the CPM with the name and resume of its proposed Cultural Resources Specialist (CRS), and alternate(s), if an alternate is proposed, for approval.

CULTURAL RESOURCES SPECIALIST

The resume for the CRS and alternate(s) shall include information demonstrating that the minimum qualifications specified in the U.S. Secretary of Interior Guidelines, as published in the Code of Federal Regulations, 36 CFR Part 61 are met. In addition, the CRS shall have the following qualifications:

17. The technical specialty of the CRS shall be appropriate to the needs of the project and shall include a background in anthropology, archaeology, history, architectural history or a related field; and
18. At least three years of archaeological or historic, as appropriate, resource mitigation and field experience in California and one year in southern San Joaquin Valley; and
19. The resume of the CRS shall include the names and telephone numbers of contacts familiar with the work of the CRS on referenced projects, and shall demonstrate that the CRS has the appropriate education and experience to accomplish the cultural resource tasks that must be addressed during ground disturbance, grading, construction, and operation.

If the proposed qualifications deviate from the requirements identified, the qualifications must demonstrate that the proposed CRS is capable of implementing the conditions of exemption. No ground disturbance shall occur prior to CPM approval of the CRS, unless specifically approved by the CPM.

CULTURAL RESOURCES MONITOR

CRMs shall have the following qualifications:

1. BS or BA degree in anthropology, archaeology, historic archaeology or a related field, and one year experience monitoring in California; or
2. AS or AA degree in anthropology, archaeology, historic archaeology or a related field, and four years experience monitoring in California; or
3. Enrollment in upper division classes pursuing a degree in the field of anthropology, archaeology, historic archaeology or a related field, and two years of monitoring experience in California.

NATIVE AMERICAN MONITORS

If Native American artifacts are discovered, a Native American monitor shall be obtained to monitor ground disturbance. Informational lists of Native Americans and "Guidelines for Monitoring" shall be obtained from the Native American Heritage Commission.

Preference in selecting a monitor shall be given to Native Americans with traditional ties to the area that shall be monitored.

Verification: The project owner shall submit the resume for the CRS, and alternate(s) if desired, to the CPM for review and approval at least 45 days prior to the start of ground disturbance. If a termination or release of a CRS occurs, the project owner shall notify the CPM. The CRS may not assume duties prior to approval by the CPM.

CUL-2 If the CRS does not have recent (within five years) experience at the project location, prior to ground disturbance, the project owner shall ensure that the CRS conducts a reconnaissance survey of the project site and linears. If avoidance measures are determined to be necessary by the CRS, the CRS shall implement all avoidance measures (such as flagging or fencing) to prohibit or otherwise restrict access to sensitive resource areas during construction and/or operation.

Cultural resource monitoring shall be conducted during the initial ground disturbance at the plant site and on project linears where project excavation exceeds three feet. At the locations where the initial ground disturbance exceeds three feet the potential for encountering buried deposits shall be assessed by the CRS based on observation of the soil at various depths during the start of excavation activity at the project site and project linears. The initial assessment of necessary monitoring shall prescribe the type (none, intermittent to full time) and duration for monitoring ground disturbance within the plant site and on project linears. After each assessment, monitoring may proceed at the discretion of the CRS.

Cultural resources monitoring activities are the responsibility of the CRS. When monitoring occurs, monitors shall keep a daily log of any monitoring or cultural resource activities. Logs shall be retained onsite.

The project owner shall grant authority to the CRS, alternate CRS, and CRMs to halt construction if there is a discovery of cultural resources. In the event cultural resources are found or impacts can be anticipated, the halting or redirection of construction shall remain in effect until all of the following have occurred:

1. The CRS has notified the project owner, and the CPM has been notified within 24 hours of the discovery and is provided, a description of the discovery (or changes in character or attributes) and a recommendation regarding significance.
2. The project owner and the CRS have conferred with the CPM and the CPM has determined what, if any, data recovery or other mitigation is needed; and
3. Any necessary data recovery and mitigation has been completed.

Verification: At least 10 days prior to the start of ground disturbance, the project owner shall provide the CPM with a letter confirming that the CRS, alternate CRS and

CRMs have the authority to halt construction activities in the vicinity of a cultural resource find, and that the CRS or project owner shall notify the CPM within 24 hours of a discovery, or by Monday morning if the cultural resources discovery occurs between 8:00 A.M. on Friday and 8:00 A.M. on Sunday morning. Copies of daily logs shall be retained on-site and made available for audit by the CPM upon request.

CUL-3 The project owner shall ensure that:

1. The project owner shall ensure, all cultural resources encountered shall be recorded on a Department of Parks and Recreation (DPR) form 523 and mapped (may include photos). In addition, all archaeological materials collected as a result of the archaeological investigations (survey, testing, and data recovery) shall be curated in accordance with State Historical Resources Commission "Guidelines for the Curation of Archaeological Collections," into a retrievable storage collection in a public repository or museum. The public repository or museum must meet the standards and requirements for the curation of cultural resources set forth at Title 36 of the Federal Code of Regulations, Part 79. Copies of any DPR forms shall be provided to the CPM.
2. All applicable curation fees are paid by the project owner. Any agreements concerning curation shall be retained and available for audit for the life of the project.
3. The CRS prepare and present a training program (video or on-site presentation) to all employees hired during periods of ground disturbance. The training shall include applicable laws and at a minimum photos of artifacts that might be encountered in the local area.

Verification: At least one week prior to initiating ground disturbance, the project owner shall provide a letter to the CPM that states that the project owner will pay all curation fees, if curation is necessary.

CUL-4 The project owner shall require that the CRS prepare a Cultural Resources Report (CRR) in Archaeological Resource Management Report format (ARMR) following completion of ground disturbance activities. The CRR shall report on all field activities including dates, times and locations, findings, samplings and analysis. All survey reports, DPR 523 forms and additional research reports shall be submitted to the CPM, the California Historic Resource Information System (CHRIS) and the State Historic Preservation Officer (SHPO). If reports were submitted to the CHRIS during the siting phase of the project, provide an addendum that lists those reports. If reports were written but not submitted during the siting phase of the project, include them as attachments to this report.

Verification: The project owner shall submit the subject CRR within 90 days after completion of ground disturbance (including landscaping). Within 10 days after CPM approval, the project owner shall provide documentation to the CPM that copies of the CRR have been provided to the SHPO, the CHRIS and the curating institution (if archaeological materials were collected).

GEOLOGY CONDITION OF EXEMPTION

GEO-1 The Soils Engineering Report required by the 2001 CBSC Appendix Chapter 33, Section 3309.5 Soils Engineering Report, should specifically include data regarding the liquefaction, dynamic compaction, expansion, and collapse potential of site soils. The liquefaction analysis shall be implemented by following the recommended procedures contained in Recommended Procedures for Implementation of California Division of Mines and Geology Special Publication 117, Guidelines for Analyzing and Mitigating Liquefaction Hazards in California dated March 1999.

Verification: At least 30 days prior to ground disturbance, the project owner shall submit a copy of Soils Engineering Report, which describes the liquefaction potential of the site foundation soils and a summary of how the results of the analyses were incorporated into the project foundation and grading plan design for review by the Compliance Project Manager (CPM).

HAZARDOUS MATERIALS CONDITIONS OF EXEMPTION

HAZ-1 The project owner shall direct all vendors delivering aqueous ammonia to the site to use only tanker truck transport vehicles, which meet or exceed the specifications of DOT Code MC-307.

Verification: At least 30 days prior to receipt of aqueous ammonia onsite, the project owner shall submit copies of the notification letter to supply vendors indicating the transport vehicle specifications to the CPM for review and approval.

HAZ-2 The project owner shall not use any hazardous material in reportable quantities, as specified in Title 40, Code of Federal Regulations, section 355.50, not listed included in Table 5.10-4 of the SPPE application (KRCD2003a), unless approved in advance by the CPM.

Verification: The project owner shall provide to the CPM, in the Annual Compliance Report, a list of hazardous materials contained at the facility in reportable quantities.

HAZ-3 The project owner shall develop and implement a Safety Management Plan for delivery of aqueous ammonia and submit the plan to the CPM for review and approval. The plan shall include procedures, protective equipment requirements, training and a checklist. It shall also include a section describing all measures to be implemented to prevent mixing of aqueous ammonia with incompatible hazardous materials.

Verification: At least 30 days prior to the delivery of aqueous ammonia to be used at the facility, the project owner shall provide a safety management plan as described above to the CPM for review and approval.

HYDROLOGY AND WATER PROPOSED CONDITIONS OF EXEMPTION

WATER-1 The project owner shall install metering devices and record on a monthly basis the amount of water used by the project. The report on the monthly water use shall include the monthly range and monthly average of daily usage in gallons per day, and total water used by the project on a monthly and annual basis in acre-feet. Following the first full year of operation and in subsequent years, the annual summary will also include the yearly range and yearly average water use by the project.

Verification: The project owner shall include a water summary use report in the Annual Compliance Report submitted to the CPM for the life of the project.

WATER-2 The project owner shall purchase and recharge 100 acre-feet of surface water prior to the start of commercial operation. For each year of operation the project owner shall purchase and recharge an amount of water equal to the amount of water used by the project in the previous year. The project owner may purchase and recharge water in addition to the amount used in the previous year to bank water ahead for subsequent years. The project owner shall prepare an annual recharge report that states the amount of water purchased and recharged as well as a running balance of any banking.

Verification: The project owner shall include a water recharge report in the Annual Compliance Report submitted to the CPM for the life of the project.

NOISE AND VIBRATION CONDITION OF EXEMPTION

CONSTRUCTION TIME RESTRICTIONS

NOISE-1 Heavy equipment operation and noisy construction work relating to any project features that lie within 300 feet of residentially zoned property shall be restricted to the times of day delineated below, unless exceptions are approved, in advance, by the County of Fresno:

Monday through Friday	6 a.m. to 9 p.m.
Saturday and Sunday	7 a.m. to 5 p.m.

Haul trucks and other engine-powered equipment shall be equipped with adequate mufflers. Haul trucks shall be operated in accordance with posted speed limits. Truck engine exhaust brake use shall be limited to emergencies.

Verification: Prior to ground disturbance, the project owner shall transmit to the County of Fresno a statement acknowledging that the above restrictions will be observed throughout the construction of the project.

PUBLIC HEALTH CONDITION OF EXEMPTION

Public Health-1: The project owner shall develop and implement a cooling tower Biocide Use, Biofilm Prevention, and Legionella Control Program to ensure that cooling tower bacterial growth is controlled. The Program shall be consistent with CEC's guidelines or the Cooling Tower Institute's guidelines for control of Legionella.

Verification: At least 30 days prior to the commencement of cooling tower operations, the Biocide Use, Bio-film Prevention, and Legionella Control Program to the CPM for review and approval.

TRAFFIC AND TRANSPORTATION CONDITION OF EXEMPTION

TRANS-1 The project owner shall develop and implement a construction traffic control plan for the project in coordination with Fresno County, Caltrans and the Fowler Unified School District, as appropriate. Specifically, the overall traffic control plan shall be designed to:

- a) prevent potential adverse health and safety impacts on children who are bussed to Malaga Elementary School via South Chestnut Avenue. The project owner shall restrict construction workers and truck drivers from using South Chestnut Avenue to access the project site. Alternate routes to the project site shall be identified in the traffic control plan. This shall also apply to truck deliveries during operation of the power plant.
- b) schedule heavy vehicle equipment and building materials deliveries to occur during off-peak hours to the extent feasible; and
- c) encourage heavy vehicles and vehicles transporting hazardous materials to access the project site from SR 99 from via East North Avenue.

The construction traffic control plan shall include measures to minimize traffic impacts associated with the construction of the associated linear facilities and shall include information on:

- signing, lighting, and traffic control device placement;
- temporary travel lane closures;
- maintaining access to adjacent residential and commercial properties;
- emergency access.

Verification: At least 45 days prior to the start of ground disturbance the project owner shall provide to Fresno County and Caltrans for review and comment, and to the CPM for review and approval, a copy of its construction traffic control plan.

WASTE MANAGEMENT CONDITIONS OF EXEMPTION

WASTE-1: The project owner shall determine if the ZLD generated waste is hazardous or nonhazardous pursuant to sections 66261.3 and 66262.11 of Title 22 of the California Code of Regulations (CCR). Testing of representative samples of the wastes shall incorporate the methods set forth in Chapter 11, Division 4.5, Title 22 CCR. If deemed nonhazardous, then future sampling and testing is not required unless there is a substantial change in the wastewater treatment process or due to cross-contamination between materials and/or processes. If not classified as a hazardous waste, the project owner shall discharge all ZLD generated waste only to those disposal facilities that are authorized to accept such a waste, unless it is sold as a commercial product.

Verification: No later than 45 days after the initial generation of the ZLD wastes, the project owner shall notify the CPM of the test results and the planned disposal methods. A copy of the acceptance letter from the disposal facility that is authorized and willing to accept the ZLD wastes shall also be included.

WASTE-2: The project owner shall perform additional limited investigations to further characterize the site. If deemed necessary by the Sacramento Office of the Department of Toxic Substances Control (DTSC), the project owner shall conduct soil sampling to confirm that the site does not contain hazardous wastes in concentrations exceeding applicable health standards to be identified by DTSC. Prior to soil sampling at the site, the project owner shall submit a proposed sampling and analysis plan to the CPM and DTSC for review and approval. In the event that the soil sampling results indicate the need for additional investigations or remediation, the applicant shall consult with and obtain approval from DTSC regarding the appropriate course of action at the project site to ensure that any potentially significant adverse impacts are sufficiently mitigated.

Verification: If deemed necessary by DTSC based on the additional investigations, and at least 90 days prior to the start of ground disturbance, the project owner shall submit a proposed sampling and analysis plan to the CPM and the Sacramento Office of DTSC. The project owner shall conduct sampling in accordance with an approved sampling plan and submit the results of the additional investigations to the CPM and DTSC at least 60 days prior to the start of ground disturbance. If additional investigations or remediation is deemed necessary by DTSC, the project owner shall coordinate with DTSC as to the appropriate remedial action at least 30 days prior to the start of ground disturbance.

GENERAL CONDITIONS OF EXEMPTION

The Kings River Conservation District (KRCD) Project Compliance Plan will be developed to help track conditions of exemption. The plan provides a means for assuring that the facility is constructed and operated in compliance with air and water quality, public health and safety, other applicable laws, ordinances, regulations and standards, and conditions of exemption.

The Compliance Plan is divided into two sections:

Compliance general conditions of exemption which specify the framework for record keeping and reporting throughout the construction and operation phases of the project; and,

Conditions of exemption which contain measures that must be taken to mitigate any and all potential adverse project impacts to an insignificant level.

The Conditions of Exemption detailed in the technical subject area analysis includes a verification statement describing the means by which compliance with the condition can be verified. The verification procedures may be modified by the Commission Compliance Project Manager (CPM) as necessary to ensure compliance with the adopted conditions of exemption. Verification of compliance with the conditions of exemption will be accomplished by periodic reports filed by KRCD as required by the general conditions of exemptions.

I. DEFINITIONS

To ensure consistency, continuity, and efficiency, the following terms, as defined, apply to all technical areas, including Conditions of Exemption:

SITE MOBILIZATION:

Site mobilization occurs when moving trailers and related equipment onto the site, usually accompanied by minor ground disturbance, grading for the trailers and limited vehicle parking, trenching for utilities, installing utilities, grading for an access corridor, and other related activities. Ground disturbance, grading, etc. for site mobilization are limited to the portion of the site necessary for placing the trailers and providing access and parking for the occupants. Site mobilization is for temporary facilities and is therefore not considered construction.

GROUND DISTURBANCE:

Ground disturbance occurs when onsite activity results in the removal of soil or vegetation, boring, trenching or alteration of the site surface. This does not include driving or parking a passenger vehicle, pickup truck, or other light vehicle, or walking on the site.

GRADING:

Grading occurs when onsite activity conducted with earth-moving equipment results in alteration of the topographical features of the site such as leveling, removal of hills or high spots, or moving of soil from one area to another.

CONSTRUCTION:

[From section 25105 of the Warren-Alquist Act.] Onsite work to install permanent equipment or structures for any facility. Construction does not include the following:

1. The installation of environmental monitoring equipment.
2. A soil or geological investigation.
3. A topographical survey.
4. Any other study or investigation to determine the environmental acceptability or feasibility of the use of the site for any particular facility.
5. Any work to provide access to the site for any of the purposes specified in a., b., c., or d.

II. COMPLIANCE PROJECT MANAGER

A Compliance Project Manager (CPM) will be designated to oversee compliance with Conditions of Exemption. The assigned CPM, after consultation with the appropriate technical staff, and approval of Commission management and responsible agencies, shall:

1. Ensure that compliance files are established and maintained for the KRCDPP;
2. Track compliance filings;
3. Ensure the timely processing of proposed changes to the Commission Decision;
4. Use all available means to encourage the resolution of disputes; and,
5. Coordinate compliance monitoring activities of Commission and delegate agency staff as specified in the Conditions of Exemption.

III. PROJECT OWNER RESPONSIBILITY

It shall be the responsibility of the project's owner and operator, KRCD, to comply with and ensure that the compliance general conditions and all conditions of exemption are satisfied. Failure to comply with any of the conditions of exemption or the compliance general conditions may result in reopening of the case and revocation of the SPPE, or other action as appropriate.

KRCD shall send verification submittals to the CPM indicating, whether such condition was satisfied or work performed by KRCD or other agent, and whether or not such verification was also submitted to the CPM by an agent.

IV. COMPLIANCE RECORD

KRCD shall maintain, for the life of the project, files of all conditions of exemption correspondence, and final as-built drawings.

The Commission shall maintain as a public record:

1. All documents received regarding compliance with the conditions of exemption;
2. All complaints filed with the Commission; and,
3. All petitions for changes to conditions of exemption and documentation of the resulting staff or Commission action taken.

V. COMPLIANCE SUBMITTALS

All compliance submittals and correspondence pertaining to compliance matters shall include a cover letter with a description of the submittal and a reference to the compliance general condition and/or the condition of exemption number(s) which the submittal is intended to satisfy. All submittals shall be addressed as follows:

**Compliance Project Manager
California Energy Commission
1516 Ninth Street (MS-2000)
Sacramento, CA 95814**

VI. CONSTRUCTION MONTHLY REPORTS

The project owner must submit construction monthly reports to the CPM to assist in tracking activities and monitoring compliance with the terms and conditions of the Commission Decision. During construction, the project owner or authorized agent will submit monthly reports for air quality, hazardous material, paleontology, transportation and water.

Tasks Prior to Start of Construction

Construction shall not commence until all pre-construction conditions of exemption have been complied with. Project owners frequently anticipate starting project construction as soon as the project is exempted. In some cases it may be necessary for the project owner to file submittals prior to exemption if the required lead-time for a required compliance event extends beyond the date anticipated for start of construction. It is also important that the project owner understand that pre-construction activities that are initiated prior to exemption are performed at the owner's own risk.

Various lead times for verification submittals to the CPM for conditions of exemption are established to allow sufficient staff time to review and comment, and

if necessary, allow the project owner to revise the submittal in a timely manner. This will ensure that project construction may proceed according to schedule.

The first construction monthly report is due the month following the Energy Commission business meeting date on which the project was approved, unless otherwise agreed to by the CPM.

During pre-construction and construction of the project, the project owner or authorized agent shall submit an original and three copies of the monthly report within 10 working days after the end of each reporting month. Monthly reports shall be clearly identified for the month being reported. The reports shall contain at a minimum:

1. a transmittal letter summarizing the current project construction status;
2. documents required by specific conditions to be submitted along with the monthly report. Each of these items should be identified in the transmittal letter.

VII. ANNUAL REPORTS

After the air district has issued a Permit to operate, the project owner shall submit annual reports instead of monthly reports. The reports are for each year of commercial operation and are due to the CPM at a date agreed to by the CPM. Annual reports shall be submitted over the life of the project unless otherwise specified by the CPM. The report shall contain at a minimum:

1. a transmittal letter summarizing the current project operating status and an explanation of any significant changes to the facility operations during the year;
2. documents required by specific conditions to be submitted along with the annual report. Each of these items should be identified in the transmittal letter.

VIII. CONFIDENTIAL INFORMATION

Any information which KRCD deems proprietary shall be submitted to the Commission Docket Unit (Mail Stop 4) to be processed pursuant to California Code of Regulations, Title 20, section 2505(a). Any information which is determined to be confidential shall be kept confidential as provided for in California Code of Regulations, Title 20, section 2501 et seq. Information deemed not to be confidential will become public information.

IX. ACCESS TO THE FACILITY

The CPM, or other designated Commission staff or agent, shall be granted access at any time to the project site, transmission line right-of-way, and related sites.

**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF CALIFORNIA**

APPLICATION FOR CERTIFICATION
FOR A SMALL POWER PLANT EXEMPTION
KINGS RIVER CONSERVATION DISTRICT
PEAKING PLANT (KINGS RIVER)

DOCKET No. 03-SPPE-02

EXHIBIT LIST¹

APPLICANT'S EXHIBITS

- Exhibit 1: Kings River Conservation District Peaking Plant Application—Small Power Plant Exemption (Volumes 1 & 2), filed November 26, 2003
- Exhibit 1.1: Project Description, Energy Resources, and Alternatives. Declaration and Incorporated Testimony of Jack Sinor. Sponsored by Applicant and admitted into evidence on March 23, 2004.
- Exhibit 1.2: Transmission System Engineering and Transmission Line Safety & Nuisance. Declaration and Incorporated Testimony of Randall Hunt. Sponsored by Applicant and admitted into evidence on March 23, 2004.
- Exhibit 1.3: Air Quality and Public Health, Hazardous Materials Management, Waste Management. Declaration and Incorporated Testimony of Thor Hibbeler. Sponsored by Applicant and admitted into evidence on March 23, 2004.
- Exhibit 1.4: Cultural Resources. Declaration and Incorporated Testimony of Leigh Martin, and Bryan Larson
- Exhibit 1.5: Geology and Mineral Resources and Paleontology. Declarations and Incorporated Testimony of Richard Shatz and Paul Murphey. Sponsored by Applicant and admitted into evidence on March 23, 2004.

¹ Whether or not shown on this Exhibit List, all testimony is inclusive of the witness' prefiled qualifications in the form of employment biographies, curriculum vitae, resumes and any other statements listing qualifications and work experience: Generally, such statements were filed with prehearing conference statements:

- Exhibit 1.6: Land Use and Recreation. Declaration and Incorporated Testimony of Amy Cuellar. Sponsored by Applicant and admitted into evidence on March 23, 2004.
- Exhibit 1.7: Socioeconomics. Declaration and Incorporated Testimony of Don Wagenet. Sponsored by Applicant and admitted into evidence on March 23, 2004.
- Exhibit 1.8: Traffic & Transportation. Declaration and Incorporated Testimony of John Wilson. Sponsored by Applicant and admitted into evidence on March 23, 2004.
- Exhibit 1.9: Biological Resources. Declaration and Incorporated Testimony of Jeff Halstead. . Sponsored by Applicant and admitted into evidence on March 23, 2004.
- Exhibit 1.10: Hydrology and Water Quality. Declaration and Incorporated Testimony of Scott Redelfs. Sponsored by Applicant and admitted into evidence on March 23, 2004.
- Exhibit 1.11: Noise and Vibration. Declaration and Incorporated Testimony of Jim Brennan. Sponsored by Applicant and admitted into evidence on March 23, 2004.
- Exhibit 1.12: Visual Resources and Plumes. Declarations and Incorporated Testimony of Marsha Gale and Jim Brennan. Sponsored by Applicant and admitted into evidence on March 23, 2004.
- Exhibit 1A: Initial Responses to CEC Data Requests (dated December 17, 2003), submitted January 16, 2004 (Docket Log #30750).
- Exhibit 1B: Responses to CEC Air Quality Data Request 1 and 9, submitted January 22, 2004 (Docket Log #30769).
- Exhibit 1C: Letter from KRCD on Water Mitigation dated February 4, 2004 – submitted in response to Data Request 29 (Docket Log #30864).
- Exhibit 1D: Data Requests Responses in the Areas of Air Quality, Cultural, and Visual Resources, submitted February 13, 2004 (Docket Log #30925).

STAFF'S EXHIBITS

- Exhibit 2: California Energy Commission Staff Final Initial Study filed on March 10, 2004: Sponsored by Staff and admitted into evidence on March 23, 2004.
- Exhibit 2A: Supplemental testimony by Project Manager Jack Caswell in the area of Project Description. Sponsored by Staff and admitted into evidence on March 23, 2004.
- Exhibit 2B: Revised Declaration of Rick Tyler dated March 17, 2004. Sponsored by Staff and admitted into evidence on March 23, 2004.